



MIKE PENCE, *Governor*  
JAMAL L. SMITH, *Executive Director*

ICRC No.: EMha13031020

[REDACTED],  
Complainant,

v.

FOUNTAINVIEW GOLDEN LIVING CENTER,  
Respondent.

### NOTICE OF FINDING

The Deputy Director of the Indiana Civil Rights Commission ("Commission") pursuant to statutory authority and procedural regulations, hereby issues the following findings with respect to the above-referenced case. Probable cause exists to believe that an unlawful discriminatory practice occurred in this instance. 910 IAC 1-3-2(b).

On March 19, 2013, [REDACTED] ("Complainant") filed a Complaint with the Commission against Fountainview Golden Living Center ("Respondent") alleging discrimination on the basis of perceived disability and sex (pregnancy) in violation of the Indiana Civil Rights Law (Ind. Code § 22-9, *et seq.*) [REDACTED]

Accordingly, the Commission has jurisdiction over the parties and the subject matter of this Complaint.

An investigation has been completed. Both parties have had an opportunity to submit evidence. Based on the final investigative report and a review of the relevant files and records, the Deputy Director now finds the following:

The issue presented to the Commission is whether Complainant faced an adverse employment action because of her pregnancy and/or a perceived disability. In order to prevail, Complainant must show that: (1) she is a member of a protected class; (2) she suffered an adverse employment action; (3) she was meeting Respondent's legitimate business expectations; and (4) similarly-situated individuals who were not pregnant or not perceived to be disabled were treated more favorably under similar circumstances.

It is evident that Complainant is a member of a protected class by virtue of her pregnancy; however, there is no evidence that Complainant was perceived to be disabled. Further, evidence shows that Complainant was subjected to an adverse employment action despite meeting



Respondent's legitimate business expectations. Moreover, evidence shows that similarly-situated individuals who were not pregnant were treated more favorably under similar circumstances.

By way of background and at all times relevant to the Complaint, Respondent policies provide that it will only provide restricted or "light" duty positions to individuals who sustain work-related injuries or as a reasonable accommodation under the ADAAA. Similarly, an employee requesting restricted duty for a non-work related injury or condition not eligible for Accommodated Duty may be considered for leave pursuant to HR Personal Leaves, HR Company Non-FML Medical Leave and/or HR Family Medical Leave. Employees utilizing the aforementioned leave may use available vacation or sick time as well.

At all times relevant to the Complaint, Complainant worked as a Certified Nursing Assistant whose duties involved but were not limited to lifting and transferring patients. On or about December 18, 2012, Complainant provided Respondent with a doctor's note indicating that she had a 20 pound temporary weight restriction. Evidence shows that Tanya Toth, Respondent's Director of Nursing, advised Complainant that no light duty work was available because she was a CNA responsible for performing the majority of heavy lifting at the facility. Ultimately, Respondent placed Complainant on FML until she received a full duty release on or about December 31, 2012.

While Complainant is incorrect in her assertion that she was laid off, Respondent had an obligation to treat Complainant as it would treat any other disabled employee or employee with a temporary impairment. Specifically, the Pregnancy Discrimination Act ensures that if a woman is temporarily unable to perform her job due to a medical condition related to pregnancy or childbirth, the employer must treat her in the same way it treats any other temporarily impaired employee, such as providing light duty, alternative assignments, disability leave or unpaid leave. In this instance, Respondent's policy clearly provides a class of employees with light duty or restricted positions. As such, Respondent should have provided Complainant with similar opportunities. Thus, a nexus exists between being placed on FML and Complainant's pregnancy and probable cause exists to believe that an unlawful discriminatory practice occurred in this instance.

A public hearing is necessary to determine whether a violation of the Indiana Civil Rights Law occurred as alleged in the above-referenced case. Ind. Code §22-9-1-18, 910 IAC 1-3-5. The parties may elect to have these claims hear in the circuit or superior court in the county in which the alleged discriminatory act occurred. However, both parties must agree to such an election, or the Commission will hear this matter. Ind. Code § 22-9-1-16, 910 IAC 1-3-6

May 15, 2014

Date

Akia A. Haynes

Akia A. Haynes, Esq.,

Deputy Director

Indiana Civil Rights Commission